

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 76-2128

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X  
IMANNUN ABDUT TAWWAB (a/k/a Eric Caesar),  
NASSIR ABDUL SABUR (a/k/a Irving Dunaway),  
DAWUD ABDULLAH RAHMAN, TARIQ ABDUR RAHMAN  
(a/k/a Graham Johnson), ABBAS ABDUL RAQIB  
(a/k/a Robert Young), KASIM ABDUL JABBAR  
(a/k/a Herschel Lee Armour), SALAH ABDUR  
RAHMAN (Levon Jackson), ABDUL BASIR AL JABBAR  
(a/k/a Lester R. Tepway),

Appellants,

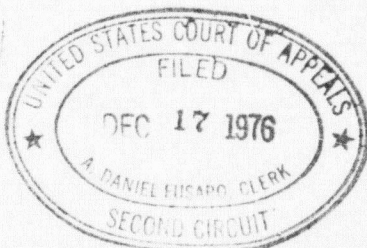
Docket Number  
76-2128

- against -

PAUL W. METZ, Individually and as Superintendent  
of Great Meadow Correctional Facility, and  
BENJAMIN WARD, Individually and as Commissioner  
of the New York State Department of Correctional  
Services, MARSHALL MASON, Individually and as  
Correctional Sergeant, Great Meadow Correctional  
Facility,

Appellees.

-----X  
APPENDIX



DATED: New York, New York  
December 17, 1976

PIERCE GERETY, JR.  
CLAUDIA ANGELOS  
ELIZABETH A. GAYNES  
DANIEL J. STEINBOCK  
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P/S

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Feb. 23 1 Filed complaint-issued and orig. & 6 copies & delivered to  
 Marshal for service  
 Feb. 23 2 Filed Motion for leave to proceed in forma pauperis and order of Judge  
 Foley dated Feb. 20, 1976 granting same  
 Mar. 8 3 Filed summons served 3/4/76 on Sgt. Marshall Mason, through Arthur  
 Parry, H. Clerk, on Paul W. Metz, through Arthur Parry, H. Clerk,  
 on Marshall Mason, through Arthur Parry, H. Clerk, served 2/27/76 on  
 Benjamin Ward, through Vic Zuckerman, Atty.  
 Mar. 10 4 Filed Notice of Motion, returnable April 5, 1976 at Albany & Motion to  
 Dismiss Complaint  
 Apr. 5 Adjourned to April 19, 1976 by consent  
 Apr. 15 5 Filed Memorandum of Law in Opposition to defendants motion to Dismiss  
 " 15 6 Filed Administrative Regulations  
 Apr. 16 7 Filed Defendant's Memorandum of Law in Support of Motion to Dismiss  
 Complaint  
 Apr. 16 8 Filed Defendant's Supporting Affidavit  
 Apr. 19 Entire File mailed to Bender Solomon for hearing  
 Apr. 19 Motion for an order dismissing the complaint, by defendants-To be  
 referred to Magistrate Solomon  
 Aug. 26 9 Filed Memorandum-Decision and Order of Judge Foley(8/25/76) granting  
 defendant's motion to dismiss the complaint and dismissing the compl  
 in its entirety  
 Aug. 26 10 Filed Judgment and mailed cards, re: Judgment to Albany Law School  
 Legal Assistance Project and Hon. Louis J. Lefkowitz, ATTN: Timothy  
 F. O'Brien, Asst. Attorney General  
 Sept. 20 11 Filed Notice of Appeal by plaintiffs

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

IMANNUN ABDUT TAWWAB (a/k/a Eric Caesar), HASSIR  
ABDUL SABUR (a/k/a Irving Dunaway), DAEUD  
ABDULLAH RAHMAN, TARIO ABDUR RAHMAN (a/k/a  
Graham Johnson), ABBAS ABDUL PAQIB (a/k/a Robert  
Young), KASIM ABDUL JABBAR (a/k/a Herschel Lee  
Armour), SALAH ABDUR RAHMAN (Levon Jackson), ABDUL  
BASIR AL JABBAR (a/k/a Lester R. Tepway),

Plaintiffs,

-against-

COMPLAINT

PAUL W. METZ, Individually and as Superintendent  
of Great Meadow Correctional Facility, and  
BENJAMIN WARD, Individually and as Commissioner  
of the New York State Department of Correctional  
Services, MARSHALL MASON, Individually and as  
Correctional Sergeant, Great Meadow Correctional  
Facility,  
Defendants.

76-CV

JURISDICTIONAL STATEMENT

1. Plaintiffs bring this action pursuant to 42 U.S.C.  
§§1981 and 1983 and 28 U.S.C. §§1343, 2201 and 2202 seeking  
declaratory and injunctive relief/ and monetary damages. Plaintiffs allege that defend-  
ants, while acting under color of State law, statute and regulation,  
have deprived plaintiffs of their right to practice their religion  
and have deprived plaintiffs of their liberty without due process  
of law and deprived plaintiffs of their right to access to the  
courts and the effective assistance of counsel, and have denied  
plaintiffs the equal protection and due process of the laws in  
violation of their rights under the First, Sixth and Fourteenth  
Amendments to the United States Constitution.

PARTIES

2. Plaintiffs are all Sunni Muslims, who follow the  
way of life and religion known as Islam. Orthodox or Sunni  
Muslims (who have also been referred to historically and inaccurately  
as Moslems and Mohammedans) comprise the majority of nearly 60



countries, and the total worldwide Muslim population is nearly 700,000,000, including members of every race and nationality. Plaintiffs are all inmates at Great Meadow Correctional Facility, Comstock, New York, a maximum security prison under the jurisdiction of the New York State Department of Correctional Services, with the exception of Plaintiff Abdul Basir Al Jabbar, who was an inmate at said Great Meadow Correctional Facility until December, 1975, at which time he was transferred to Clinton Correctional Facility, a maximum security prison under the jurisdiction of the New York State Department of Correctional Services in Dannemora, New York where he is presently confined.

3. Defendant Benjamin Ward is the Commissioner of the Department of Correctional Services. In that capacity, he is responsible for the superintendence, management and control of Great Meadow Correctional Facility and of the inmates confined therein and for all matters relating to the government, discipline, policing, contracts and fiscal concerns thereof. He is responsible for the supervision of defendant Superintendent Paul Metz and all other officers and employees of the department assigned to Great Meadow Correctional Facility, and for the promulgation of rules and regulations governing the supervision and management of Great Meadow and all other New York State Correctional Facilities.

4. Defendant Paul Metz is Superintendent of Great Meadow Correctional Facility. In that capacity, he is responsible for the supervision and management of Great Meadow subject to the rules and statutory powers of the Commissioner.

5. Defendant Marshall Mason is a Corrections Sergeant at Great Meadow Correctional Facility. In that capacity, he is responsible for the supervision of Correctional officers and the maintenance of order and discipline within the institution.

FOR A FIRST CAUSE OF ACTION ALL PLAINTIFFS ALLEGE:

6. The Sunni Muslim religion is recognized and duly acknowledged by the Department of Correctional Services; the members of the Sunni Muslim community at Great Meadow are permitted to meet on a limited basis in order to worship and study together.

7. The entire Sunni Muslim community (with the exception of those members in Special Housing or keeplock) is and at all times relevant hereto has been permitted by the Great Meadow administration to meet together for a prayer service on Friday of each week from 1 to 3 p.m. These services are held in a basement room called the Mosque.



8. This Friday prayer service is a community prayer service held on the Muslim "sabbath", and known as "Juma". It is one of many "prayer services" which all Muslims are required to perform on a daily basis.

9. Prior to November 22, 1975, approximately fifteen members of the Community (roughly one-third of the Sunni Muslim population) were allowed to meet on Monday evening of each week from 5 p.m. to 7 p.m. for religious educational classes.

10. Prior to November 22, 1975, the entire Sunni Muslim community at Great Meadow was also permitted to meet in the Mosque with duly recognized Muslim ministers from the free world when such ministers visited the prison to render spiritual teaching, advice and ministrations. These meetings usually occurred on weekends at times other than the regularly scheduled educational class or "Juma".

11. These meetings, in which all the prisoners in the Great Meadow Sunni Muslim community had access to the outside ministers, served the essential religious requirement of education as a Muslim.

12. A Muslim is one who accepts God's sovereignty and completely submits himself or herself to the law of God (Allah).

This law is found by Muslims in the Qur'an, the last revealed word of God and the basic source of Islamic injunctions and laws. Included in the contents of the Holy Qur'an are the bases for systems of social justice, economics, politics legislation, jurisprudence and international relationships, as well as history, worship, knowledge and wisdom.

13. The original language of the Qur'an is Arabic, a difficult non-European language which Muslims must learn in order to read, study and worship in accordance with their religious duties.

14. In addition to the Qur'an, many volumes of "Hadith" are requisite for the Muslim to read and study and follow. These



writings comprise the sayings and doings by the Prophet Muhammad (p.b.u.h.) which explain and elaborate the Qur'anic teachings.

15. It is basic to the practice of Islam that a Muslim learn to read and understand all the laws he or she is required to follow, and the gaining of knowledge is mandatory and obligatory upon Muslims.

16. For a convert, particularly a convert whose mother tongue is other than Arabic, the learning process is long and difficult, and the process of becoming a Sunni Muslim fully versed in the required practices requires much instruction in language and in the understanding of complex and sophisticated laws and concepts.

17. It is also basic to the practice of Islam that it should involve a community of persons striving toward a life of righteousness, and not mainly individuals striving individually or alone.

18. Therefore, the practice of their religion by the plaintiffs requires not only individual practices of prayer and certain other required acts and beliefs, but also classes with ministers who are able to guide the plaintiffs and others of their community in the practice of Islam.

19. Although there are "ministers" within the Sunni Muslim community at Great Meadow who are able to lead the community on a daily basis and lead the community in daily and holy day worship and observance, the outside ministers are specially qualified and trained to teach, and have greater access to literature and commentaries which assist in the understanding of the religious obligations.

20. As a result of the Islamic laws and traditional emphasis upon community religious practices, many elements of religious education involve practices concerning the Muslim family (relationships with spouses, children) and other aspects of life not immediately available to Muslims who are incarcerated.

Therefore, certain laws and practices are more particularly within the knowledge of outside ministers who have daily contact with Islam as it is practiced in the free world.

21. The Department of Correctional Services, in promulgating directives relative to the providing of Chaplain Services and religious instruction, has also recognized the importance of religious instruction as a part of the exercise of one's religion, not only for its rehabilitative value, but to guarantee the inmate his or her constitutionally protected right to the free exercise of religion.

22. Without classes of instruction and discussion where the Muslim community may learn the complex laws and practices, from specially qualified outside ministers who have access to greater information, plaintiffs are prevented from following and understanding the laws which their religious beliefs compel them to follow.

23. There have never been any disturbances or threat to prison security generated during these meetings of the entire Sunni Muslim community with the duly recognized Muslim ministers, and as far as plaintiffs know, these sessions have always been in harmony with the discipline, rules and regulations of the institution.

24. These meetings with outside ministers occurred regularly through August 1975.

25. During September, October and November, the outside ministers did not visit Great Meadow Correctional Facility due in part to a shortage of funds.

26. Sometime after August 1975 on information and belief, a new unwritten policy was instituted at Great Meadow Correctional Facility prohibiting meetings by outside ministers with the entire Sunni Muslim community except at the Friday prayer service. This policy did allow the free world ministers to attend the regularly scheduled education class which is limited to a small



number of inmates. The result of this new policy was to ban the previously held weekend meetings between the outside ministers and the entire Community and to deny a substantial number of Sunni Muslim inmates the opportunity to meet with outside ministers and receive their religious instruction.

27. According to this new policy, if the outside ministers visited Great Meadow other than at the time of the regularly scheduled prayer service or educational class, they would only be allowed to meet with three leaders of the Sunni Muslim community at Great Meadow.

28. Prior to November 22, 1975, no notice of this changed policy and restriction upon religious practices was given to the members of the Sunni Muslim community at Great Meadow.

29. On November 22, 1975, Al-Alamin Abdul Latif and Hason Abdul Haqq, ministers from the Ya-Sin Mosque, 52 He. Lmer Street, Brooklyn, New York, arrived at Great Meadow Correctional Facility to meet with the entire Sunni Muslim community. They were allowed to meet only with three leaders of the community, Immanun Abdut Tawwab, the Imam (leader) (a/k/a Eric Caesar), Nassir Abdul Sabur, (a/k/a Irving Dunaway) and Dawud Abdullah Rahman.

30. On November 23, 1975, the meeting was again limited to these three inmates. Other members of the Sunni Muslim community who entered the Mosque that day were required to leave, and the remaining members of the community numbering approximately 40 inmates were not allowed to meet with the free world ministers.

31. Because of the great distance which the outside ministers must travel, and the necessity for them to perform their full time obligations to their own Mosque, it has not always or generally been possible for them to be present at Great Meadow for the very few occasions during which defendants permit them to meet with the Great Meadow community, such as the Friday prayer service, the Monday education class which has a stringent limit on participation by inmates. Even though a somewhat modified policy for educational

classes was instituted immediately after the November 22nd weekend, allowing two classes per week, one on Friday evening, one on Saturday from 5:00 - 7:00 p.m., each attended by 15 men chosen by the institution from a list of all Sunni Muslims at Great Meadow, this changed policy does not remedy the unwarranted restriction upon plaintiff's religious instruction. All Sunni Muslims are still not allowed to benefit from the limited number of visits the outside ministers can make to Great Meadow.

32. Therefore, the defendants policy has had and continues to have the effect of limiting severely or in most cases totally eliminating the opportunity of plaintiffs and other Sunni Muslims to access to religiously required spiritual instruction without serving any compelling interest which defendants have a right to protect.

33. As a result, the majority of Muslim inmates were denied their right to practice their religion, by defendants' action in denying them access to the ministers.

34. Defendants by prohibiting all the members of the Sunni Muslim community at Great Meadow Correctional Facility from meeting with Ministers Al-Alawin Abdul Latif and Hasan Abdul Haqq on November 22, and November 23, 1975, infringed upon plaintiffs' free exercise of their religion in violation of the First and Fourteenth Amendments to the United States Constitution.

35. Furthermore, by providing at State expense a Christian chaplain available on a daily basis to Christian inmates while denying to the Sunni Muslim a chance to meet together with the outside ministers for community religious instruction essential to the practice of their religion, defendants have violated the Establishment Clause of the First Amendment, applicable to the State through the Fourteenth Amendment to the United States Constitution, and have thereby discriminated against the Sunni Muslims in favor of the more traditional Western religions, in violation of the Equal Protection Clause of the Fourteenth Amendment.

FOR A SECOND CAUSE OF ACTION ALL PLAINTIFFS ALLEGE:

36. Paragraphs 6 through 35 are hereby incorporated into this Second Cause of Action as if fully set forth herein.

37. The new policy instituted subsequent to August, 1975, as set forth in paragraph 13 et seq, and which resulted in a serious limitation of the plaintiffs previous freedom to exercise their religious beliefs and practices, was instituted without any notification to the plaintiffs, nor any opportunity for them to be



heard on the appropriateness or lawfulness of such a limitation.

38. The institution of said new procedure without notice or an opportunity to be heard denied plaintiffs their right to due process of law as guaranteed by the Fourteenth Amendment.

FOR A THIRD CAUSE OF ACTION ALL PLAINTIFFS ALLEGE:

39. Paragraphs 6 through 38 are hereby incorporated into this Third Cause of Action as if more fully set forth herein.

40. On November 23, 1975 plaintiffs Imannun, Nassir and Dawud were the three inmate leaders who were allowed to meet with Ministers Al-Alamin and Hason in the Mosque; plaintiffs Tariq and Abbas entered the Mosque that morning but were required to leave along with two other members of the Sunni Muslim community.

41. Shortly after Tariq, Abbas and the two other men were taken from the basement Mosque, those remaining heard yelling and screaming coming from upstairs.

42. Plaintiffs Imannun, Nassir and Dawud left the Mosque and went down the corridor and up to the top of the basement stairs to find out what was happening. A locked gate at the top of the stairs confined them to the space at the head of the stairs. From this point these three plaintiffs could hear and could observe to a very limited extent that a disturbance was taking place in the mess hall corridor. A second locked gate separated them from this corridor.

43. Plaintiffs Tariq and Abbas were escorted out of the basement through the gate at the head of the stairs, and through the gate to the mess hall corridor; on the way they were told by Lieutenant Martin that they were keeplocked. The other two men were not keeplocked.

44. Plaintiff Tariq questioned the reason for their keeplock; he was told to keep moving.

45. He was then pushed by a correction officer and a physical encounter ensued during which plaintiff Tariq was knocked

unconscious by Defendant Sergeant Mason.

46. Plaintiff Abbas also questioned the reason for the keeplock; he became involved in a physical confrontation with correction officers when he saw plaintiff Tariq being beaten by correction officers.

47. Plaintiffs Kasim and Salah were in the mess hall corridor, when the disturbance began involving plaintiffs Tariq and Abbas, and became involved in the disturbance.

48. As a result of these events, plaintiffs Imannun, Nassir and Dawud were charged with violating institutional rules §§1.00 (Violations which are a Danger to life, health, security or property) and 1.25 (Disturbance; creation, participation or inciting others to participate). Plaintiffs Tariq and Abbas were charged with violating institutional rules §§1.00, 1.15 (assault), 1.90 (refusing to obey a direct order), 2.35 (unauthorized assembly) and 3.30.13 (out of place) and plaintiff Abbas was also charged with violating rule §1.75 (interference with an employee in the performance of his duty). Plaintiffs Kassim and Salah were charged with violating institutional rules §1.25 and 1.75 and plaintiff Salah was also charged with violating rules §§1.00 and 1.15. A copy of these charges are annexed hereto and marked Exhibits A, B, C, D, E, F and G, respectively.

49. These seven plaintiffs were confined in F-Block, the segregated housing unit at Great Meadow Correctional Facility, on that same day except for plaintiff Kasim who was taken there the next day.

50. On or about December 1, 1975, they were served with copies of the Formal Charges (Exhibits A, B, C, D, E, F and G).

51. On or about December 8, 1975, they were taken separately before Superintendent's Proceedings at Great Meadow.

52. In accordance with the instructions given by the presiding officer and written on the Formal Charges, these seven



plaintiffs elected to remain silent at their Superintendent's Proceedings.

53. At the Proceedings for plaintiffs Imannun, Nassir, Dawud, Tariq and Abbas the presiding officer read the charges against each plaintiff respectively; no evidence was introduced into the record against said plaintiffs in their presence and they remained in the hearing room throughout the Proceeding; no correction officer or other person testified against said plaintiffs. In the absence of any evidence presented to plaintiffs and made a part of the record, the presiding officer passed sentence upon each of said plaintiffs.

54. For plaintiffs Kasim and Salah, after reading the charges, the presiding officer directed them to leave the hearing room. When leaving the room, they passed the correction officer or officers who filed the charges against them, going into the reading room. The names of these officers are also stated on the Formal Charges, Exhibits F and G respectively. After remaining outside the room for a few minutes, they were escorted back into the room and told by the presiding officer that the evidence he heard convinced him said plaintiffs were guilty as charged.

55. Plaintiff Abdul, who was not at the scene when the disturbance occurred, but arrived afterwards, was as a result of these events, charged with violations of rules #1.25, 1.15 and 1.75 (A copy of these charges are annexed hereto as Exhibit H). He was keeplocked, then was moved to F-Block, and on December 3, 1975, he was transferred to Clinton Correctional Facility where he received his Superintendent's Proceeding. On information and belief, no evidence was introduced into the record against plaintiff Abdul in his presence and no correction officer or other person testified against him. On information and belief, in the absence of any evidence presented to plaintiff and made a part of the record, the presiding officer passed sentence upon plaintiff Abdul.

56. Plaintiffs Imannun, Nassir and Dawud received 45 days in F-Block under keeplock and a loss of 45 days good time credit; plaintiffs Tariq and Abbas received 60 days in F-Block under keeplock and a loss of 60 days good time credit; plaintiffs



Kasim and Salah received 60 days in F-Block without a keeplock and a loss of 60 days good time credit. Plaintiff Abdul received time served in keeplock or special Housing and a loss of 120 days good time credit. (A copy of the dispositions are annexed hereto and marked as Exhibits I.J.K.L.M.N.O. and P.)

57. Plaintiffs all deny they are guilty as charged.

58. Plaintiffs are entitled to a fact finding hearing at which a determination to impose or not to impose a disciplinary sanction, and the degree of punishment are made after full consideration by the presiding officer of all the relevant facts and circumstances presented at the hearing. Plaintiffs have the right to read or hear and to respond to (to the extent they deem a response necessary and appropriate) all the evidence which is considered by the presiding officer in reaching his decision. No evidence was presented against plaintiffs in their presence. What written documents may have been considered by the presiding officer is unknown to them. In effect, serious sanctions were imposed without a hearing.

59. Plaintiffs, by their attorneys, duly protested and appealed the violations of their constitutional and civil rights alleged herein to defendant Benjamin Ward. Said defendant, by his attorney Patrick J. Fish, denied said appeal in a letter dated January 19, 1976. (A copy of Mr. Fish's letter is annexed hereto as Exhibit Q.)

60. Plaintiffs have been denied the hearing to which they are entitled under the Fourteenth Amendment to the United States Constitution.

FOR A FOURTH CAUSE OF ACTION ALL PLAINTIFFS ALLEGE:

61. Paragraphs 6 through 60 are hereby incorporated into this Fourth Cause of Action as if fully set forth herein.

62. The disturbance which occurred on November 23, 1975 resulted from the unwarranted infringement of plaintiffs' religious freedom and involved a serious physical encounter between plaintiffs and a total of at least ten (10) correctional officers em-

ployed by the State Department of Correctional Services at Great Meadow Correctional Facility.

63. The persons who conducted the Superintendent's Proceedings for plaintiffs are supposed to weigh the evidence and rule impartially, free from other actual or apparent influence upon their decision-making capacity.

64. All the plaintiffs do not know the identity of these hearing officers; plaintiffs Imannun, Dawud and Salah think their presiding officer was either Deputy Superintendent for Administration, J. A. Labate, or Deputy Superintendent for Programs, Jack Czarnetski. According to Department regulation, 7 NYCRR §253.2, the Superintendent, his deputy, or some other employee of the Department shall conduct the hearing.

65. All employees of the Department of Correctional Services share a common and substantial interest in avoiding the merest suggestion of improper actions on the part of correction officers such as might subject them or the State of New York to any liability or loss of stature.

66. A failure to affirm the charges against the plaintiffs would create the inference that plaintiffs' religious freedoms may have been unlawfully infringed and that the use of force against plaintiffs was improper, and would constitute an official finding that the written misbehavior reports upon which the Formal Charges were based were falsely composed.

67. Determinations in favor of plaintiffs and in effect against the correction officers involved would jeopardize the latter's job security, create the risk of financial liability and undermine their credibility and respect with the inmate population.

68. A failure by the hearing officers to sustain the charges against the plaintiffs would have been directly in conflict with their concern among the prison staff and with the substantial and understandable identity of interest the hearing officers share with correction personnel at Great Meadow in the result of Super-



intendent's Proceedings considering charges of assault, creating a disturbance, and endangering life, health and security involving physical encounters between inmates and correction officers.

69. Correction personnel cannot have the detached and impartial stature free from the competing and conflicting influences which make them biased in favor of their fellow Department employees.

70. The rules and regulations of the Department of Correctional Services pursuant to which Superintendent's Proceedings are conducted do not assure an impartial factfinding procedure. The rules do not require that the hearing officer weigh the evidence for and against the inmate, nor that the determination be made as a matter of the preponderance of the evidence. The standard upon which the hearing officer "shall affirm the charge" is: "satisfaction...that the record of the proceeding contains substantial evidence in support of the charge" 7 NYCRR 253.4(g). This standard allows for a lawful determination against petitioner on the trial level if there is some competent evidence against him even though there is a preponderance of the evidence in his favor.

71. The rules and regulations of the Department of Correctional Services do not require a sufficiently complete investigation or interviewing process to make the factfinding procedure by the hearing officer sound and free from the danger of arbitrary and capricious determinations. The hearing officer is required to interview only one person with direct knowledge of the incident and that person is to be an employee 7 NYCRR 253.4(c). There is no requirement that inmate witnesses be interviewed personally by the presiding officer no matter how relevant their information might be.

72. The rules and regulations of the Department of Correctional Services sanction a further risk of arbitrary and capricious decision-making by incorporating automatically all written reports and reports and records of the adjustment committee

pertinent to the alleged infractions into the record of the Superintendent's Proceeding and allowing for their consideration "without the necessity of formally reading same into the record" 7 NYCRR 253.4(d). Not reading these written documents into the record means they are not read to or given to the inmate charged with the infraction. Their truthfulness and accuracy are never tested by their revelation to a person with an interest adverse to the author of the documents. The danger is that unreliable, unchallenged hearsay information is presented to the hearing officer to serve as a basis for a supposedly reliable factual determination.

73. The cursory manner in which plaintiffs' Superintendent's Proceedings were conducted despite the serious charges they faced is also indicative that the hearing officers are not the fair and impartial factfinders to which plaintiffs are entitled.

74. The failure to provide plaintiffs with hearing officers who were neutral and detached in fact and appearance deprived them of their right to a fair and impartial hearing in violation of the Due Process Clause of the United States Constitution.

FOR A FIFTH CAUSE OF ACTION, PLAINTIFFS ABBAS ABDUL RAQIB (a/k/a ROBERT YOUNG,) and DAUD ABDULLAH PAHMAN allege:

75. Paragraphs 1 through 74 are hereby incorporated into this Fifth Cause of Action as if fully set forth herein.

76. As a result of the occurrences above noted, plaintiffs contacted the Albany Law School Legal Assistance Project to seek assistance concerning the possibility of seeking relief against the unconstitutional deprivations suffered by them as a result of the actions of defendants.

77. Each of the plaintiffs were subsequently interviewed by at least one of the attorneys associated with the Albany Law School Legal Assistance Project on at least one occasion, with the exception of ABDEL BASIR AL JABBAR who was transferred



shortly after the November 23 incident to Clinton Prison.)

78. Plaintiffs decided that they wished to pursue their claim of the unconstitutional denial of their civil rights in federal court, and requested assistance of Lanny E. Walter and Elizabeth A. Gaynes, duly licensed attorneys associated with the Albany Law School Legal Assistance Project.

79. On the 30th day of December, 1975, plaintiffs Abbas and Dawud were to have been interviewed by Attorney Gaynes in order to review the ~~draft~~ Complaint and provide additional details necessary to finalize and file the Complaint.

80. On the 30th day of December, 1975, said Plaintiffs Abbas and Dawud were denied the right to visit with their attorney, although Attorney Gaynes made a proper request to interview these men, said men were never brought to the interview room.

81. The visiting room officer informed counsel that these plaintiffs, incarcerated in the Special Housing, F-Block, could not visit in the visiting room while another inmate from F-Block was having a legal visit, that the rule was mandated by Defendant Metz, and that since another attorney, Mr. Lanny Walter, was visiting with another plaintiff, neither Abbas nor Dawud could receive their legal visits.

82. Since the other plaintiffs being interviewed in the visiting room at the time required all available visiting time, plaintiffs Abbas and Dawud were never permitted an interview with their attorney, Elizabeth A. Gaynes, although she was available and requested to interview them.

83. Inmates not in F-Block would not have been denied such a visit.

84. An inmate in F-Block who received a family visit would be permitted to visit in the same visiting room even if another inmate from F-Block was also in the visiting room on a family or legal visit.

85. Denial of an attorney visit, which limits an in-



mate's access to the courts, and denies him the effective assistance of counsel, is not a permissible punishment which may be imposed upon an inmate in Special Housing.

86. As a result of their incarceration in F-Block, Plaintiffs Abbas and Dawud were denied equal protection of the laws guaranteed by the Fourteenth Amendment, and the effective assistance of counsel, access to the courts and due process of the laws as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution.

WHEREFORE, plaintiffs request that this Court grant a judgment in their favor:

1. Declaring that the refusal of the defendants to allow the entire Sunni Muslim community at Great Meadow Correctional Facility to meet in the basement Mosque with the visiting ministers from the Ya - Sin Mosque on November 22 and 23, 1975 was a violation of their right to practice their religion free from governmental interference guaranteed by the First and Fourteenth Amendments to the United States Constitution;

2. Declaring that the Superintendent's Proceeding held for plaintiffs on or about December 8, 1975 violated their right to Due Process of Law as protected by the Fourteenth Amendment to the United States Constitution by failing to make determinations based upon evidence presented to plaintiffs and to which they had an opportunity to respond;

3. Declaring that the Superintendent's Proceeding held for plaintiffs on or about December 8, 1975 violated their right to Due Process of Law as protected by the Fourteenth Amendment to the United States Constitution by depriving them of the impartial fact finding hearing free from the hazard of arbitrary decision making to which they are entitled;



4. Declaring that defendant Superintendent Paul Metz's policy and practice of allowing only one inmate at a time, who is housed in F-Block at Great Meadow Correctional Facility, to meet with a representative of the Albany Law School Legal Assistance Project violates plaintiffs' right of access to the court and their right to counsel as protected by the Fourteenth Amendment to the United States Constitution;

5. Ordering defendants, their agents and successors in office to allow all the members of the Sunni Muslim community at Great Meadow Correctional Facility to meet at the same time for prayer and religious advice and ministrations in the Mosque with their ministers from outside the prison facility for at least two hours on any day on which said ministers visit the Great Meadow Correctional Facility; and to further allow at least three leaders of the Sunni Muslim community selected by that community to meet with said outside ministers in the Mosque (at times the whole community is not meeting) during regular visiting hours (9:00 a.m. to 3:30 p.m.) on any day on which said ministers visit Great Meadow Correctional Facility;

6. Ordering that the determinations of the Superintendent's Proceedings held for plaintiffs on or about December 8, 1975 be vacated that the good time credit which they each lost pursuant to said determinations be restored, and subject to paragraph seven below that all records and reports pertaining to the November 23, 1975 incident shall be expunged from plaintiffs' prison files both in the facility and in the central office in Albany, New York and shall not be used as a basis in part or in whole for denying parole or deducting good time credit at some future meeting of the Parole Board or of a Time Allowance Committee under the jurisdiction of the Department of Correctional services.



7. Ordering that should defendants decide to re-institute charges against plaintiffs pertaining to the November 23, 1975 incident and reconvene Superintendent's Proceedings, plaintiffs shall be afforded the following rights before, during and after said proceedings:

a. The right to written notice at least 24 hours before the scheduled Proceeding setting forth the specific charges against them and stating the time and day on which the Proceeding will occur;

b. The right to be heard in their own defense;

c. The right to have their guilt or innocence of the charges decided by an impartial hearing officer who is not an employee of the Department of Correctional Services;

d. The right to hear all oral testimony, to read all written evidence, and to respond to all oral and written evidence taken into consideration by the hearing officer in making his determination;

e. The right to have witnesses testify for them and, to be present when they testify so long as calling them and being present will not be unduly hazardous to institutional safety or correctional goals provided that the hearing officer shall state his reasons on the record for refusing to call any witness requested by plaintiffs for refusing to allow plaintiffs to remain in the room when their witness testifies;

f. The right to receive shortly after the hearing a written statement by the fact-finder as to the evidence relied on and the reasons for the disciplinary action taken

8. Ordering that solely to effectuate this remedy, and without holding that plaintiffs are ordinarily entitled to be represented by an attorney at Superintendent's Proceedings



conducted under the jurisdiction of the Department of Correctional Services, plaintiffs shall be allowed, if they so elect, to be represented by an attorney at any subsequent Superintendent's Proceedings which may be held for them in regard to the November 23, 1975 incident at issue herein;

9. Enjoining defendant Superintendent Paul Metz; his agents and successors in office from implementing his policy and practice of allowing only one inmate at a time, who is housed in F-Block at Great Meadow Correctional Facility, to meet with a representative of the Albany Law School Legal Assistance Project, and from restricting the number of F-Block inmates who may be interviewed at any one time by Project members in the Great Meadow visiting room;

10. Entering judgment against Defendants jointly and severally for \$1,000.00 for each Plaintiff, to compensate Plaintiffs for the denial of their First Amendment rights and unconstitutional deprivations under their First and Second Causes of Action;

11. Entering judgment against Defendants jointly and severally, awarding each Plaintiff one hundred dollars per day of confinement in a Special Housing Unit or keeplock as actual and compensatory damages under their Third, Fourth and Fifth Causes of Action, and a further, equivalent amount for each Plaintiff against each Defendant individually as punitive damages under said causes of action; and a sum of money sufficient to compensate Plaintiff Tariq for any and all injuries sustained, both mental and physical, under his Third Cause of Action.

12. Awarding the Plaintiffs the costs and disbursements of this action; and

13. Granting such other and further relief as this  
court deems just and proper.

Dated: February 5, 1976  
Albany, New York

*Lanny Earl Walter*

LANNY EARL WALTER, Of Counsel  
ELIZABETH A. GAYNES, Of Counsel  
Albany Law School Legal Assistance  
Project  
80 New Scotland Avenue  
Albany, New York 12208  
Telephone 518-465-1545



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

IMANNUN ABDUL TAWHAB (a/k/a Eric Caesar),  
NASSIR ABDUL SABUR (a/k/a Irving Dunaway),  
DAWUD ABDULLAH RAHMAN, TARIQ ABDUR RAHMAN  
(a/k/a Graham Johnson), ABBAS ABDUL RAQIB  
(a/k/a Robert Young), KASIM ABDUL JABBAR  
(a/k/a Herschel Lee Armour), SALAH ABDUR  
RAHMAN (Levon Jackson), ABDUL BASIR AL  
JABBAR (a/k/a Lester R. Tepway),

Plaintiffs,

-against-

AFFIDAVIT

76 CV 81

PAUL W. METZ, Individually and as Superin-  
tendent of Great Meadow Correctional  
Facility, and BENJAMIN WARD, Individually  
and as Commissioner of the New York State  
Department of Correctional Services,  
MARSHALL MASON, Individually and as  
Correctional Sergeant, Great Meadow  
Correctional Facility,

Defendants.

STATE OF NEW YORK     )  
                              ) ss.:  
COUNTY OF ALBANY     )

TIMOTHY F. O'BRIEN, being duly sworn, deposes and says:

1. I am an Assistant Attorney General on the staff of  
Louis J. Lefkowitz, Attorney General of the State of New  
York, attorney for the above-named defendants, and submit this  
affidavit in support of a motion to dismiss the complaint in  
the above-entitled action pursuant to Rule 12(b)(1) of the  
Federal Rules of Civil Procedure on the ground that this Court  
lacks jurisdiction over the subject matter and pursuant to  
Rule 12(b)(5) of such Rules on the further ground that  
plaintiffs' complaint fails to state a cause of action upon  
which relief can be granted.



2. The complaint herein sets forth five causes of action. In the first cause of action the plaintiffs contend that the defendants' policy has the "effect of limiting severely or in most cases totally eliminating the opportunity of plaintiffs and other Sunni Muslims to access to religiously required spiritual instruction" (see paragraph 32 of the complaint). However, the complaint concedes that the Sunni Muslim religion is recognized and duly acknowledged by the New York State Department of Correctional Services and that the members of the Sunni Muslim community at Great Meadow are permitted to meet on a limited basis in order to worship and study together. The complaint admits that the "entire Sunni Muslim community \* \* \* at all times relevant hereto \* \* \* is permitted by the Great Meadow administration to meet together for a prayer service on Friday of each week from 1 to 3 p.m." The complaint further states that such "services are held in a basement room called the Mosque" (see paragraphs 6 and 7 of the complaint).

3. Paragraph 16 of the complaint alleges that "the process of becoming a Sunni Muslim fully versed in the required practices requires much instruction in language and in the understanding of complex and sophisticated laws and concepts." Paragraph 18 of the complaint admits that "there are 'ministers' within the Sunni Muslim community at Great Meadow who are able to lead the community on a daily basis and lead the community in daily and holy day worship and observance."

4. Paragraph 10 of the plaintiffs' complaint states that "Prior to November 22, 1975, the entire Sunni Muslim community



at Great Meadow" met in the Mosque "with duly recognized Muslim ministers from the free world when such ministers visited the prison to render spiritual teaching, advise and ministrations" and that such meetings "usually occurred on weekends at times other than the regularly scheduled educational class or 'Juma'." Paragraph 8 of the complaint refers to the prayer service on Friday of each week from 1 to 3 p.m. as "a community prayer service held on the Muslim 'sabbath', and known as 'Juma'."

5. Without any attempt on the part of any defendant to contradict or dispute any of the allegations of the complaint, but merely for the purpose of apprising the Court of the provisions made by the New York State Department of Correctional Services for affording "outside ministers" to Sunni Muslims at Great Meadow Correctional Facility as well as at other correctional facilities under the jurisdiction of the Department of Correctional Services, your deponent attaches hereto and makes a part hereof, and designates as Attachment "1", a copy of an Agreement (and an amendment thereto) entered into on April 1, 1975 by and between such Department and Ikhwanul Muslimun Inc.

6. Paragraph 26 of the plaintiffs' complaint makes reference to a "new unwritten policy \* \* \* instituted at Great Meadow Correctional Facility prohibiting meetings by outside ministers with the entire Sunni Muslim community except at the Friday prayer service" but goes on to state that said policy "did allow the free world ministers to attend the regularly scheduled education class which is limited to a small number of inmates."



7. The complaint alleges that on November 22, 1975, a Saturday, and on November 23, 1975, a Sunday, the "outside ministers" from the Ya-Sin Mosque "were allowed to meet only with three leaders of the community."

8. In paragraph 31 of the complaint, plaintiffs contend that due to "great distance which the outside ministers must travel, and the necessity for them to perform their full time obligations to their own Mosque, it has not always or generally been possible for them to be present at Great Meadow for the very few occasions during which defendants permit them to meet with the Great Meadow community" such as "the Friday prayer service, or the Monday education class which has a stringent limit on participation by inmates." Said paragraph also alleges that "Even though a somewhat modified policy for educational classes was instituted immediately after the November 22nd weekend, allowing two classes per week, one on Friday evening, one on Saturday from 5:00 - 7:00 p.m., each attended by 15 men chosen by the institution from a list of all Sunni Muslims at Great Meadow, this changed policy does not remedy the unwarranted restriction upon plaintiffs' religious instruction." These classes are in addition to the two hour weekly prayer service every Friday (the Muslim Sabbath) from 1 to 3 p.m. }

9. Despite all of these admitted facts, the plaintiffs, at paragraphs 32, 33 and 34, allege that "the defendants policy has had and continues to have the effect of limiting severely or in most cases totally eliminating the opportunity of plaintiffs and other Sunni Muslims to access to religiously

required spiritual instruction" as a result of which "the majority of Muslim inmates were denied their right to practice their religion.

10. Deponent submits that it is patent from the allegations of plaintiffs' complaint hereinabove referred to that such facts clearly contradict plaintiffs' conclusory allegation that the plaintiffs in this action "were denied their right to practice their religion".

11. Based upon the facts admitted by the plaintiffs in the first cause of action of their complaint, no federal constitutional question is presented that would justify judicial intervention by this court on the ground that these plaintiffs, as inmates of Great Meadow Correctional Facility, have been or are being deprived of the free exercise and enjoyment of religious profession and worship, consistent with proper discipline and management of a state correctional facility, in violation of the First Amendment.

12. Deponent submits that, on its face, plaintiffs' second cause of action which contends that the plaintiffs were constitutionally entitled to notice and an opportunity to be heard with respect to the "appropriateness or lawfulness" of a change of policy resulting in a "serious limitation of the plaintiffs previous freedom to exercise their religious beliefs and practices," does not amount to a deprivation of a constitutional right guaranteed to the plaintiffs by the Fourteenth Amendment to the United States Constitution.



13. With respect to plaintiffs' third cause of action wherein plaintiffs allege that they were denied rights guaranteed to them under the Fourteenth Amendment to the United States Constitution in that they were subjected to disciplinary proceedings and certain sanctions resulting therefrom, arising out of events which occurred on or about November 23, 1975, your deponent submits that Exhibits "A" through "Q" attached to plaintiffs' complaint show beyond cavil that the plaintiffs were indeed afforded the due process of law to which they, as inmates of a state correctional facility are entitled, i.e. (a) proper notice of the charges brought against them and (b) an opportunity to be heard in connection with such proceedings, and thus were afforded all of the rights guaranteed to them under said Fourteenth Amendment.

14. With respect to plaintiffs' fourth cause of action which likewise challenges the legality of the superintendent's proceedings conducted against the plaintiffs, deponent submits that the factual allegations set forth in those paragraphs contained in plaintiffs' fourth cause of action, i.e., paragraphs 61-74, are insufficient on their face to state a cause of action under 42 U.S.C. § 1983, as this statute has been interpreted by the United States Supreme Court. Here again, with respect to this fourth cause of action, the exhibits previously referred to that are attached to plaintiffs' complaint show clearly that the disciplinary proceedings which were conducted afforded to the plaintiffs, as inmates of Great Meadow Correctional Facility, the due process of law to which they were entitled.



15. With respect to the plaintiffs' fifth cause of action wherein two of the plaintiffs allege denial of access to the courts based upon denial of an attorney visit, the allegations of the plaintiffs' complaint allege that the two plaintiffs named in the fifth cause of action were denied the right to visit with their attorney on the 30th day of December, 1975. It is again patent from the complaint itself that such denial was made pursuant to a reasonable rule then in effect at Great Meadow Correctional Facility, which was explained to counsel at the time, i.e., "The visiting room officer informed counsel that these plaintiffs, incarcerated in the Special Housing, F-Block, could not visit in the visiting room while another inmate from F-Block was having a legal visit \* \* \* and that since another attorney, Mr. Larry Walter, was visiting with another plaintiff, \* \* \* and since the other plaintiffs being interviewed in the visiting room at the time required all available visiting time" the two plaintiffs named in said fifth cause of action could not under the circumstances be permitted an interview with their attorney on the day in question. Under such circumstances, judicial intervention is not necessary to secure constitutional rights. The denial of an attorney visit to an inmate based upon security and/or a rule with respect to visiting hours are matters of pure internal prison management.

WHEREFORE, defendants respectfully request that the  
complaint be dismissed.

*Timothy F. O'Brien*  
TIMOTHY F. O'BRIEN

Sworn to before me this  
16th day of April, 1976.

*Anthony J. Hinde*  
Notary Public



RECEIVED

APR 1 1975

STATE OF NEW YORK  
DEPARTMENT OF CORRECTIONS

AGREEMENT, made April 1, 1975, by and between the DEPARTMENT OF

CORRECTIONAL SERVICES, an agency of the State of New York, having its principal office located at Building #2, State Office Campus, Albany, New York, 12226, hereinafter referred to as "CORRECTIONS", and IKHMANUL MUSLIMUN INC., a religious corporation organized under the laws of the State of New York, having its principal office located at 52 Herkimer Place, Brooklyn, New York, 11216.

WITNESSETH:

WHEREAS, CORRECTIONS is charged with the duty to provide religious instructions and services for its inmates of different religious faiths; and

WHEREAS, many inmates of CORRECTIONS' correctional institutions profess to be of the Sunni Muslim faith; and

WHEREAS, CORRECTIONS does not have the staff required to provide religious instructions and services to its Sunni Muslim inmates; and

WHEREAS, Ikmanul Muslimun Inc., acting through its Ya-Sin-Mosque (hereinafter referred to as YA-SIN), has the ministers available to provide such services.

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein set forth, the parties agree as follows:

1. YA-SIN shall provide Amins (ministers) to assist with religious instructions and services for Sunni Muslims at the following correctional facilities: Clinton at Dannemora, New York; Attica at Attica, New York; Elmira at Elmira, New York; Ossining at Ossining, New York; Wallkill at Wallkill, New York; Easton at Bannock, New York; Auburn at Auburn, New York; Green Haven at Green Haven, New York; Great Meadow at Comstock, New York; and Bedford Hills at Bedford Hills, New York.

At each of the facilities listed above, YA-SIN will establish:

(1) where necessary Juma services every Friday, consisting of approximately 2 hours; (2) assist in developing weekly classes dealing with the basic fundamentals of the Islam religion, i.e., performance of prayer, pillars of faith and its explanation, and preparation for the annual religious fast.

2. For its services under this AGREEMENT, CORRECTIONS shall pay YA-SIN the sum of four-six dollars (\$4.00) per correctional institution visited. Such amount includes: transport, transportation, lodging, and food. The amount to be paid for this AGREEMENT may not exceed twenty-four

BEST COPY AVAILABLE

thousand dollars (\$24,000.00) for the period March 1, 1975 to March 31, 1976.

YA-SIN shall prepare official New York State vouchers monthly in order to be reimbursed.

3. This AGREEMENT shall begin on April 1, 1975 or upon approval thereof by the New York State Comptroller, whichever is later, and shall continue until March 31, 1976. However, this AGREEMENT may be terminated by either party upon 30 days notice.

4. Sunni Muslim inmates who are released from a correctional institution are allowed to visit the YA-SIN-MOSQUE in Brooklyn, New York, and may receive continued religious instructions and employment and housing assistance.

5. In order to facilitate the admittance of YA-SIN's Amirs into each correctional institution, YA-SIN shall notify CORRECTIONS of the names of the Amirs who will be visiting each correctional facility weekly. A list of back-up personnel will also be provided. Each Amir and the back-up personnel is required to have credentials on his person at the time of his admittance to the correctional institution. The Director of Ministerial Services shall issue appropriate credentials.

6. Each Amir and back-up personnel engaged by YA-SIN will be required to attend an orientation session at the CORRECTIONS' Training Academy located on New Scotland Road, Albany, New York. CORRECTIONS shall pay the full expenses of such orientation. The purpose of the orientation is to acquaint each Amir and back-up personnel with the statutes, policies, rules and regulations of CORRECTIONS. Each Amir and back-up personnel shall abide by the statutes, policies, rules and regulations of or affecting CORRECTIONS.

7. CORRECTIONS assumes no liability for the safety of YA-SIN's Amirs and back-up personnel beyond that provided for other visitors. CORRECTIONS shall exercise such supervision over the religious instructions and services as is necessary and appropriate for the safety and security of the institution.

8. Any notice to either party hereunder must be in writing, signed by the party giving it, and shall be served either personally or by registered mail addressed as follows:



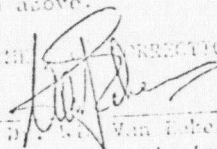
TO: Rev. Earl P. Moore  
Director of Ministerial Services  
Building #2  
State Campus  
Albany, New York 12226

TO: Amir Ismail A. Rahim  
Ya-Sin-Mosque  
Muslim Prison Committee  
52 Herkimer Place  
Brooklyn, New York 11216

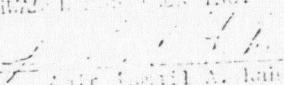
and/or such other addressee as may be designated by either party upon written notice. Any notice shall not be effective until received by the addressee.

9. Appendix A, attached hereto, contains the standard state clauses and is hereby made a part of this AGREEMENT. Paragraph IV of attached Appendix A is hereby modified to remove all references to "creed", insofar as it would be required by the provisions of Executive Law #296 (11).

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT the day and year first written above.

DEPARTMENT OF CORRECTIONAL SERVICES  
BY   
D. G. Van Buren  
Deputy Commissioner  
Administrative Services

PRISONERS UNION, INC.

BY   
Amir Ismail A. Rahim

Funds Available

Approved as to Form:

DATE: \_\_\_\_\_

JOSE J. LEFKOWITZ

Attorney General

by \_\_\_\_\_  
Assistant Attorney General

Approved and filed:

DATE: \_\_\_\_\_

ARTHUR S. LEVITT  
Comptroller

by \_\_\_\_\_  
For the Comptroller

AMENDMENT TO AGREEMENT, made June 1, 1975, by and between the DEPARTMENT OF CORRECTIONAL SERVICES, an agency of the State of New York, having its principal office located at Building No. 2, State Office Campus, Albany, New York, 12226, hereinafter referred to as "CORRECTIONS", and IKHWANUL MUSLIMIN INC., a religious corporation organized under the laws of the State of New York, having its principal office located at 52 Herkimer Place, Brooklyn, New York, 11216, hereinafter referred to as "YA-SIH."

WITNESSETH:

WHEREAS, the AGREEMENT to which this AMENDMENT pertains was executed on April 1, 1975, and

WHEREAS, it is now apparent that provisions in paragraph "2" of said AGREEMENT are erroneous.

NOW, THEREFORE, in consideration of the mutual covenants and considerations, the parties agree to amend paragraph "2" as follows:

"2. For its services under this AGREEMENT, CORRECTIONS shall pay YA-SIH the sum of forty-six dollars (\$46.00) per correctional institution visited. Such amount includes a stipend, transportation, lodging, and food expenses. The sum to be paid under this AGREEMENT may not exceed twenty-four thousand dollars (\$24,000.00) for the period April 1, 1975 to March 31, 1976. YA-SIH shall prepare official New York State vouchers monthly in order to be reimbursed."

IN WITNESS WHEREOF, the parties hereto have executed this AMENDMENT TO AGREEMENT the day and year first written above.

DEPARTMENT OF CORRECTIONAL SERVICES

By \_\_\_\_\_

Dr. Win van Bekerem  
Deputy Commissioner  
Administrative Services

IKHWANUL MUSLIMIN INC.

By \_\_\_\_\_

Amir Ismail A. Rahim

Funds Available

Approved as to Form:

DATE: \_\_\_\_\_

LOUIS J. LEFKOWITZ  
Attorney General

By \_\_\_\_\_

Approved and Filed:

DATE: \_\_\_\_\_

ARTHUR LEVITT  
Comptroller

By \_\_\_\_\_

For the Comptroller



AUG 26 1976

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

IMANNUN ABDUT TAWAB (a/k/a Eric Caesar),  
 NASSIR ABDUL SABUR (a/k/a Irving Dunaway),  
 DAWUD ABDULLAH RAHMAN, TARIQ ABDUR RAHMAN  
 (a/k/a Graham Johnson), ABBAS ABDUL RAQIB  
 (a/k/a Robert Young), KASIM ABDUL JABBAR  
 (a/k/a Herschel Lee Armour), SALAH ABDUR  
 RAHMAN (Levon Jackson), ABDUL BASIR AL  
 JABBAR (a/k/a Lester R. Tepway),

Plaintiffs,

76-CV-81

-against-

PAUL W. METZ, Individually and as  
 Superintendent of Great Meadow Cor-  
 rectional Facility, and BENJAMIN WARD,  
 Individually and as Commissioner of  
 the New York State Department of Cor-  
 rectional Services, MARSHALL MASON,  
 Individually and as Correctional  
 Sergeant, Great Meadow Correctional  
 Facility,

Defendants.

## APPEARANCES:

ALBANY LAW SCHOOL LEGAL ASSISTANCE  
 PROJECT  
 Attorneys for Plaintiffs  
 80 New Scotland Avenue  
 Albany, New York 12208

LOUIS J. LEFKOWITZ  
 Attorney General of the State of  
 New York  
 Attorney for Defendants  
 The Capitol  
 Albany, New York 12224

## OF COUNSEL:

LANNY EARL WALTER  
 ELIZABETH A. GAYNES

TIMOTHY F. O'BRIEN  
 Assistant Attorney General

JAMES T. FOLEY, D. J.

## MEMORANDUM-DECISION and ORDER

The complaint in this action was drafted by the Albany Law School Legal Assistance Project and filed in behalf of the eight named plaintiffs, claiming deprivation and violation of their federal constitutional rights during their confinement as inmates of the Great Meadow Correctional Facility, located at Comstock, New York. Jurisdiction is under the usual civil rights statutes invoked routinely in cases of this kind. Declaratory and injunctive relief and monetary damages are prayed for. The filing of the complaint and direction for its service was accomplished by my grant

of a motion for leave to proceed in forma pauperis by simple endorsement upon the formal motion.

At hand now for decision is a motion by the Attorney General representing all defendants to dismiss the complaint in its entirety on two grounds: Under Fed. R. Civ. P. 12(b)(1), on the ground there is lack of jurisdiction of the subject matter; and under Fed. R. Civ. P. 12(b)(6), on the ground the complaint fails to state claims upon which relief can be granted. This dismissal motion was later supported by an affidavit of Assistant Attorney General Timothy F. O'Brien with Attachment "1" that is an Agreement (and an amendment thereto) made April 1, 1975, covering the practice of the Sunni Muslim religion in all the Correctional Facilities of New York State. The Agreement was made between the Department of Correctional Services and Ikhwanul Muslimun Inc. to allow that religious corporation to provide ministers at the Facility for Sunni Muslim religious services and classes and to pay the Ya-Sin-Mosque of the Corporation \$46.00 per visit as an allowance for stipend, transportation, or lodging and food for each minister entering the Facility. This Agreement is pertinent to the first claim in the complaint that the plaintiffs are being hampered and discriminated against at Great Meadow in the exercise of the Sunni Muslim religion to the extent that their constitutionally protected rights to the free exercise of their religion is being violated.

There are four other claims in the complaint designated as causes of action. Briefly, the second claim alleges a change in policy regarding the religious practice was a violation of due process because it was effected without notification to plaintiffs; the third and fourth claims involve alleged constitutional deprivations and violations in the disciplinary proceedings, hearings and decisions in which the plaintiffs were involved; and the fifth claim asserts a denial of effective assistance of counsel and access to the courts, violating constitutional rights because an attorney of



the Project was not allowed to interview in a visiting room at Great Meadow. The reason was that a rule of the Facility does not permit the interviewing of an inmate from F-Block in the visiting room when another inmate from the same F-Block is being interviewed by another attorney which admittedly was what was taking place. The two attorneys from the Albany Project had travelled together by automobile to Great Meadow at Comstock, not far distant from Albany and the rule was enforced, and inasmuch as one attorney used the entire visiting time for his interview, the other attorney could not interview the other two inmates and thus was inconvenienced. The affidavit supporting the motion to dismiss outlines the law and points to portions of the complaint and its attached Exhibits that it is argued justify the grant of the motion to dismiss the five separate claims. The supporting affidavit, in my judgment, supplies the response described by the Court of Appeals, Second Circuit, as "generally better" to obtain before dismissal of a state prisoner complaint of this kind. *Burger v. Henderson*, \_\_\_ F.2d \_\_\_, Dkt. No. 75-2144, Sl. Op. 3831, at 3832, fn. 1, decided May 24, 1976. After careful review of the submission on the motion, it is evident that the actual facts, contrary to the allegations of the complaint, do not possess sufficient substance to demonstrate existence of federal constitutional violations or deprivation of constitutional privileges or immunities. Therefore, in my judgment, there is insufficient support in the federal law to uphold the claims and the grant of the defendants' motion to dismiss the complaint for failure to state any claim upon which federal relief can be granted is warranted. This ruling is made with complete awareness that all allegations of the complaint at this stage must be accepted as true. *Crug v. Beto*, 405 U.S. 319, 322 (1972); see also *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

I

The first claim alleging interference and discrimination

against the free exercise of the Sunni Muslim religion is, of course, one that on its face causes deep concern that a fundamental constitutional right and privilege is being hampered. It is well established that prisoners retain their First Amendment Rights relating to religious freedom. *Mukmak v. Com'r of Dept. of Correctional Services*, 529 F.2d 272, 275 (2d Cir. 1976), cert. den., \_\_\_\_\_ U.S. \_\_\_\_\_, 6/1/76, 44 U.S. Law Week 3683. In *Cruz v. Beto*, supra, the plaintiff was a Buddhist and alleged that while in prison he was denied a reasonable opportunity to pursue his faith comparable to that afforded fellow prisoners. That situation does not exist here because an agreement regarding the conduct of Sunni Muslim religious services and instructions in all New York State correctional facilities, Attachment #1 to supporting affidavit for motion to dismiss, is the best evidence to the contrary. That agreement allows collective religious services of that religion every Friday for two (2) hours, and allows for development of weekly classes dealing with the fundamentals of the Islam religion. Such understanding is a far cry to my mind from any hampering of the exercise of the Sunni Muslim religion because by its terms it insures the right of visitation by outside ministers and is even fair enough to pay travel and subsistence expense of \$46.00 per visit for the visiting ministers. It has been pointed out that the practice of any religion, however orthodox its belief and however accepted its practice, is subject to strict supervision and extensive limitations in a prison. *Sostre v. McGinnis*, 334 F.2d 906, 908 (2d Cir. 1964), cert. den., 379 U.S. 892 (1964); see also *Knuckles v. Prasse*, 302 F. Supp. 1036, 1062 (E.D. Pa. 1967), aff'd 435 F.2d 1255 (3d Cir. 1970); *Lareau v. MacDougall*, 473 F.2d 974 (2d Cir. 1973), cert. den., 414 U.S. 878; *Gittlemacker v. Prasse*, 428 F.2d 1, 5 (3d Cir. 1970). Religious practices in a maximum security prison or facility with an enormous inmate population has to be subjected to rules and regulations, or obviously there would



otherwise be confusion and disorder that undoubtedly could affect the security interest that always has to be a predominant consideration in the prison setting. I find the arrangement made for the practice of the Sunni Muslim religion at Great Meadow to be fair and reasonable, particularly weighing the dangers of the setting involved that justify supervision and limitation.

In all these cases involving state correctional facilities, and I have ruled in many, I am ever mindful of the caution enunciated in so many different ways that federal courts should not interfere with the administration of state prisons unless there is substantial showing of possible violation of federal constitutional rights. This caution and principle was reiterated very recently by the United States Supreme Court in *Meacham v. Fano*, \_\_\_\_\_ U.S. \_\_\_\_\_, decided 6/25/76, 44 U.S. Law Week 5053, at 5057:

The federal courts do not sit to supervise state prisons, the administration of which is of acute interest to the States. *Preiser v. Rodriguez*, 411 U.S. 475, 491-492 (1973); *Cruz v. Beto*, 405 U.S. 319, 321 (1972); *Johnson v. Avery*, 393 U.S. 483, 486 (1969).

To the above citations, I add as ones expressing the same thought: *Wallace v. Kern*, 520 F.2d 400, 408 (2d Cir. 1975); *Shakur v. Malcolm*, 525 F.2d 1144 (2d Cir. 1975); *U.S. ex rel. Walker v. Mancusi*, 467 F.2d 51, at 53 (2d Cir. 1972); *Rhea v. McGrath*, 326 F. Supp. 681, 689 (S.D.N.Y. 1971, Mansfield, D.J.). Chief Judge Kaufman made a striking statement in 1971 that I think holds true today in the noted case of *Sostre v. McGinnis*, 442 F.2d 178, 191 (2d Cir. 1971):

Even a lifetime of study in prison administration and several advanced degrees in the field would not qualify us as a federal court to command state officials to shun a policy that they have decided is suitable because to us the choice seems unsound or personally repugnant. (Emphasis in original).

In the complaint here, the relief sought in this instance of alleged religious discrimination is for this court to order that all members

of the Sunni Muslim community be allowed to meet at the same time for prayer and religious advice with their outside ministers for at least two (2) hours on any day the ministers visit at Great Meadow, and to allow three leaders of the Sunni Muslim community to meet the ministers (at times when the whole community is not meeting) during the visiting hours on any day the ministers visit. If this drastic and extraordinary relief would not be the most direct intrusion into a delicate matter of prison administration by a federal court, then my imagination can think of none more intrusive.

## II

The second, third and fourth claims essentially are based upon allegations claimed to arise to federal due process violation. Due to this basic similarity, the three claims shall be discussed together in this portion of this memorandum.

The Second claim (or cause of action) charges this due process violation occurred in this instance because the policy change said to limit previously enjoyed religious practices was made without notice to plaintiffs and allowance to them of opportunity to be heard in protest. The grievance was the refusal to allow the entire Sunni Muslim community to meet in the basement mosque with visiting ministers on November 22 and 23, 1975. The one authority offered for this claim is *Procunier v. Martinez*, 416 U.S. 396, 418 (1974) which involved the rejection of letters written by or addressed to inmates and that situation seems to me to be inapposite for application to this factual situation. If there were to be directed a court decree to the effect that with every policy change in this tense environment of a prison, there must be notice and hearing provided to inmates, then the administrative processing of the problems that arise quickly and daily in prison affairs will be severely impaired. Due Process has been described as an elastic



principle and its context varies according to the special factual context. *Hannah v. Larche*, 363 U.S. 420, 442 (1960). It is my conclusion that in this factual context here this second claim clearly lacks federal merit and substance.

The third and fourth claims challenge the conduct of the disciplinary proceedings on due process that involved each of the plaintiffs after serious charges were placed against them. The formal written charges to be determined at a Superintendent's Proceeding are attached to the complaint. The plaintiffs were charged with the violation of institutional rules covering generally dangers to security, creating disturbances, refusing orders, and interfering with correction officers in the performance of their duties. The written charges particularize in detail the conduct forming the basis for the charges against each of the plaintiffs, setting forth the date, the names of the officers, with description of the incidents in which each was involved.

The alleged violations of due process are stated to be that although the formal charges were read to each plaintiff and they remained silent, the evidence was not introduced during their presence, no correction officer testified in their presence, and that the presiding officer announced when plaintiffs were brought back that they were found guilty as charged. The contention is that plaintiffs are entitled to fact finding hearing, the right to read or hear all evidence in their presence and the right to respond. One plaintiff was keep-locked by the decision rendered and then transferred to Clinton; the others were keep-locked and each lost good time allowance. The request for restoration of good time loss runs into the problem that such relief cannot be granted without application first to the State courts although incongruously the damage claim if viable could stand in the federal court. See *Preiser v. Rodriguez*, 411 U.S. 475 (1973).

However, my appraisal of the submission on this motion, and the reading of the complaint itself and the attachments concerning the disciplinary proceedings, is that the requirements of the noted Supreme Court case to satisfy due process in a prison setting were fully complied with. *Wolff v. McDonnell*, 413 U.S. 539 (1974). It was specifically stated therein at pp. 568-569 that confrontation and cross-examination in prison disciplinary hearings is not required and that the better course is to leave these matters to the discretion of the officials of state prisons. This reasoning was reaffirmed recently again by the Supreme Court in *Baxter v. Palmigiano*, \_\_\_\_ U.S. \_\_\_\_, decided April 20, 1976, 44 U.S. Law Week 4487, with the additional comments that permitting an adverse inference to be drawn from an inmate's silence, which occurred here in every instance but one, is not an invalid practice, and prison authorities do not have to provide reasons in writing to support denial of confrontation and cross-examination or for denial of the limited right of an inmate to call witnesses. See also *Frankos v. LaVallee*, 535 F.2d 1346 (2d Cir. 1976).

Under the procedural provisions there was report to the Commissioner of the Superintendent's Proceedings with review by him. The one inmate who did not remain silent only offered the statement that he was not present at the time of the incident, but came on the scene later. As a matter of common sense in view of the silence of most of the plaintiffs charged and statement by only one, it does not seem detailed fact findings or reasons would be necessary for the determination of disciplinary violations. Furthermore, it would be difficult to reject the appraisal of these procedures challenged here in view of the credit accorded them by the Court of Appeals, Second Circuit. It was stated that the New York punitive procedures recognize both the demands of elementary fairness and suitability of an impartial hearing. *U.S. ex rel. Haymes v. Montanye*, 505 F.2d 97 980-981 (2d Cir. 1974), rev'd and remanded



on other grounds, sub nom. *Montanye v. Haymes*, \_\_\_\_ U.S. \_\_\_\_, June 25, 1976, 44 U.S. Law Week 5051.

The claim that some of the hearing officers at the Superintendent's Proceedings were facility or correctional employees does not state a claim of constitutional violation under settled case law. There is no showing that any were investigators, or reviewing officers of the incident, or witnesses involved in the presentation of the charges. Such connection with the incident might be cause of concern for an impartial hearing. See *Wolff v. McDonnell*, *supra*, p. 572, fn. 20; *Crooks v. Warner*, 516 F.2d 837 (2d Cir. 1975); see also *Hortonville Joint School District No. 1 et al. v. Hortonville Education Association et al.*, \_\_\_\_ U.S. \_\_\_\_, decided June 17, 1976, 44 U.S. Law Week 4864. There is no showing that any members sitting at the Superintendent's Proceedings here were ones that should be classified as being impartial due to any direct connection with incidents upon which the charges to be heard were based. Due process has been characterized as a flexible concept but the flexibility in a prison setting has to be considerably diminished and regulated.

The fifth claim is based upon one incident wherein it is claimed Attorney Elizabeth A. Gaynes of the Albany Project on December 30, 1975, was not allowed to interview two of the plaintiffs herein about the complaint in this case because another inmate from the same cell block, F-Block, was being interviewed in the visiting room, and a rule of the facility does not allow the interviewing at the same time and place of inmates from that block. The allegation is the rule was enforced by a correction officer, and time ran out because Attorney Lanny E. Walter of the same Albany Project used it up, and Attorney Gaynes could not interview the two plaintiffs although she was available.

The claim is based upon violation of the Equal Protection Clause, denial of access to an attorney and thus to the courts. Frankly, I cannot view this incident as one of constitutional proportions because

it is an isolated incident and does not reflect any intent to block attorney interviewers. Great Meadow is about 60 miles from Albany, and I am sure Attorney Caynes was inconvenienced. It is unfortunate that some arrangement could not be made to accommodate her. But such inconveniences must be borne because we deal with tense environment where large prison populations have to be moved around with primary concern at all times for institutional security. See Shakar v. Malcolm, 525 F.2d 1144, n.5 (2d Cir. 1975), referring to comment in Procunier v. Martinez, 416 U.S. 396, 420. I may say that in my judgment this type problem should be presented to the Superintendent or the Commissioner to obtain some arrangement in regard to such visits, particularly so, where lawyers from a Project travel some distance to interview inmates from the same cell block. It seems clear beyond any doubt that a problem of this kind should be in the domain of regulation and discussion at the administrative level, and not the basis for a federal case. After long experience, I can take judicial notice that there does not exist any deliberate interference with New York State prisoners in their right of access to the courts. Their mail, petitions and complaints flow freely into this District Court and I assume flow just as freely to attorneys representing them.

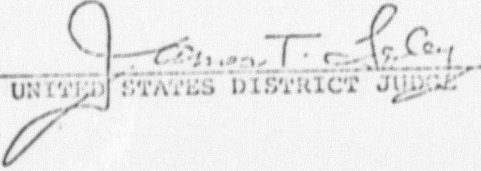
For the reasons outlined above, there are no viable federal civil rights claims presented in the complaint that withstand the motion of the defendants to dismiss for failure to state claims upon which relief can be granted.

The motion of the defendants is granted and the complaint is dismissed in its entirety.

It is so Ordered.

Dated: August 25, 1976

Albany, New York

  
UNITED STATES DISTRICT JUDGE